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Our File: 9-13528-77US

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Number of pages including cover letter: **12**
Date: November 30, 2005
From: **Kent Daniels**
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To	Company	City	Fax
ART UNIT 2685 Examiner: Pablo N. Tran	United States Patent Office – Facsimile Centre	Alexandria, VA	(571) 273-8300

Re: Serial No. 09/489,929
Inventor(s): Richard LODGE
Title: PACKET DATA TRAFFIC CONTROL FOR CELLULAR
WIRELESS NETWORK

Notice of Appeal and Request for Pre-Appeal Review attached

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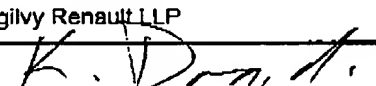
PTO/SB/21 (09-04)


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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM <small>(to be used for all correspondence after initial filing)</small>	Application Number	09/489,929	
	Filing Date	January 24, 2000	
	First Named Inventor	Richard A. Lodge	
	Art Unit	2685	
	Examiner Name	TRAN, Pablo N.	
Total Number of Pages in This Submission	12	Attorney Docket Number	9-13528-77US

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Pre-Appeal Brief Request for Review
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Ogilvy Renault LLP		
Signature			
Printed name	Kent Daniels		
Date	November 30, 2005	Reg. No.	44,206

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Typed or printed name	Kent Daniels 44,206	Date	November 30, 2005

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PTO/SB/17 (12-04v2)

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Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). FEE TRANSMITTAL For FY 2005		Complete If Known	
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Application Number	09/489,929
		Filing Date	January 24, 2000
		First Named Inventor	Richard A. Lodge
		Examiner Name	TRAN, Pablo N.
		Art Unit	2685
TOTAL AMOUNT OF PAYMENT (\$) 1,520		Attorney Docket No.	9-13528-77US

METHOD OF PAYMENT (check all that apply)	
<input type="checkbox"/> Check <input type="checkbox"/> Credit Card <input type="checkbox"/> Money Order <input type="checkbox"/> None <input type="checkbox"/> Other (please identify): _____	
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FEE CALCULATION							
1. BASIC FILING, SEARCH, AND EXAMINATION FEES							
	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fees Paid (\$)
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	
2. EXCESS CLAIM FEES							
Fee Description						Small Entity Fee (\$)	
Each claim over 20 (including Reissues)						50	
Each independent claim over 3 (including Reissues)						200	
Multiple dependent claims						360	
Total Claims						Multiple Dependent Claims	
Extra Claims						Fee (\$)	
- 20 or HP = _____ x _____ = _____						Fee Paid (\$)	
HP = highest number of total claims paid for, if greater than 20.							
Indep. Claims						Fee (\$)	
- 3 or HP = _____ x _____ = _____						Fee Paid (\$)	
HP = highest number of independent claims paid for, if greater than 3.							
3. APPLICATION SIZE FEE							
If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(c)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(g).							
Total Sheets		Extra Sheets		Number of each additional 50 or fraction thereof		Fee (\$)	
- 100 = _____		/ 50 = _____		(round up to a whole number) x _____ = _____		Fee Paid (\$)	
4. OTHER FEE(S)							
Non-English Specification, \$130 fcc (no small entity discount)						Fees Paid (\$)	
Other (c.g., late filing surcharge): (1253) Ext. Three Months \$1020 and (1401) Notice of Appeal Fee \$500						1,520	

SUBMITTED BY		
Signature	<i>K. Daniels</i>	Registration No. (Attorney/Agent)
Name (Print/Type)	Kent Daniels 44,206	Telephone (613) 780-8673
		Date November 30, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 9-13528-77US	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>November 30, 2005</u> Signature _____ Typed or printed name <u>Kent Daniels</u>		Application Number <u>09/489,929</u>	Filed <u>January 24, 2000</u>
		First Named Inventor <u>Richard A. LODGE</u>	
		Art Unit <u>2685</u>	Examiner <u>TRAN, Pablo N.</u>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. <u>X</u> The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided. I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
		Signature <u>K. Daniels</u> Typed or printed name <u>Kent Daniels</u> <u>(613) 780-8673</u> Telephone number <u>Nov 30, 2005</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Request for Pre-Appeal Review
Serial No. 09/489,929

NOV 30 2005

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Richard LODGE, et alAttorney Docket No.
9-13528-77US

Serial No: 09/489,929

Group Art Unit: 2685

Filed: January 24, 2000

Examiner: Pablo N. Tran

For: PACKET DATA TRAFFIC CONTROL FOR CELLULAR WIRELESS
NETWORKS

Mail Stop AF

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
U.S.A.

Sir:

Request for Pre-Appeal Review

Pursuant to 37 C.F.R. § 1.191, the Applicant has submitted a Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences, along with a Pre-Appeal Brief Request for Review. Specifically, the Applicant takes appeal from the Examiner's rejection of claims 1-9, 13-18, 21-29, 33-38, 41-47 and 49-52 under 35 U.S.C. § 103(a). The Notice of Appeal has been filed in response to the Examiner's Final Action mailed May 31, 2005. In support of the above-noted Pre Appeal Brief Request for Review, the Applicant now submits the following arguments:

Applicant believes that the present request for Pre-Appeal Brief Review is appropriate, because of clear factual deficiencies in the rejections of record. More specifically, the Examiner's claim rejections are based on assertions regarding the teaching of the cited reference, which assertions are explicitly contradicted by the passages relied upon by the Examiner. It should be noted that this is not a merely a matter of interpreting the meaning of a prior art teaching, or the scope of a claim. Rather, throughout the prosecution history of this

Request for Pre-Appeal Review
Serial No. 09/489,929

case, Applicant has repeatedly be placed in a position of requesting an Appeal from Examiner's rejections which are based on passages of the prior art that explicitly state the exact opposite of what the Examiner has alleged. Applicant has also been repeatedly forced to respond to claim rejections based on the Examiner finding features of the prior art which simply do not exist in the cited reference. Applicant has also been repeatedly forced to respond to claim rejections based on combinations of references that have no plausible rational. The present appeal represents a continuation of this pattern.

The Examiner's rejection

At paragraph 2 of the detailed action, the Examiner asserts, with reference to claims 1, 21 and 41 that:

"Akita et al. disclosed a method of controlling data traffic in a wireless communications network comprising a plurality of wireless terminals and base stations wherein the method having the steps of examining performance each wireless link to identify a poorly performing wireless link and temporarily interrupting the bi-directional data transmission over the poorly performing wireless link (col. 6/ln. 4-63).

Akita et al do not teach that the traffic control is implemented in the base station. However, Ludwig teaches such method of controlling the data traffic during temporarily interruption can be facilitated at the mobile station, the base station, or at the network (col. 14/ln.58-67). Since both references disclosed such method of monitoring and temporarily interruption of the wireless communication link, therefore, it would have been obvious to one of ordinary skill in the art to provide such method of data processing between devices of Ludwig to the communication system of Akita et al. in order to allow efficient handling of data transmission to effectively utilize resources for a zone, cell of a predetermined area within the network". (Underlining added)

As is detailed below, Applicant believes that the above-underlined passages in the Examiner's arguments are exactly and explicitly contradicted by the teachings of the cited references.

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United States Patent No. 5,383,221 (Akita et al.)

United States Patent No. 5,383,221 (Akita et al.) teaches a mobile station unit and channel switching method in which the mobile station monitors the quality of its link with the base station. If the link quality deteriorates, the mobile station attempts to execute a "hand-off" procedure to establish a new link with another base station. This operation is timed to coincide with reception of the start of the broadcast channel (BCCH) frame of the next each superframe. [col.6, lines 4-12]. As is clearly stated at col. 2, lines 3-5, and shown in FIG. 7, the broadcast channel (BCCH) frame comprises one of the control channels of the network, and is transmitted within the first time slot of each superframe. With this arrangement, communication with the old base station "is interrupted only during the BCCH frame period" [col. 6, lines 35-39]. Thus, Akita et al. explicitly teach that temporary interruption of communications through the link is limited to reception of a control channel.

Quite apart from the impossibility of rationally equating a broadcast control channel with "bi-directional data communication with the base station through a respective ... data communications link", it is patently obvious that reception and transmission are exact opposites. Akita explicitly teaches temporarily interrupting reception of the BCCH frame, which is the exact opposite of the Examiner's characterization of that reference.

It should be noted that, according to Akita, if the new BCCH is detected [FIG. 3 at "e", and FIG. 4 at "T5"], the mobile station completes the set-up of a new link with the new base station [FIG. 3 at steps "g"- "l"]. This results in a further interruption of communications, during "a short interval that elapses from when the BCCH is detected until the connection to the new BS is completed, i.e. an interval when the connection processing is performed." [col. 6, lines 50-54]. However, such interruption of communications is directly related to the hand-off procedure, in which the link with the old base station is discarded, and a new wireless link set up with the new base station, in order to continue communications. In this case, communications through the "old" wireless link is not merely interrupted, it is permanently ended in favour of the new link to the new base station.

United States Patent No. 6,765,889 (Ludwig)

United States Patent No. 6,765,889 (Ludwig) teaches a communication method and system, which avoids "the loss of data packets due to temporary interruptions of the

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Serial No. 09/489,929

communication network by determining, at the sending data processing device, based on information received from the communication network, which packets that are lost or will be lost during transmission due to a temporary interruption of the communication network. ... To allow retrieval of lost data packets, data packets scheduled for transmission can be temporarily stored in temporary storage devices. " [Abstract]

The fact that temporary interruptions occur in wireless communications networks, is very well known, and predates Ludwig. Thus Ludwig teaches a data communications method that is tolerant of temporary communications interruptions, by enabling the resending of data packets that are lost or will be lost during the interruption. However, Ludwig does not teach or suggest deliberately creating interruptions, and more particularly does not teach, suggest, or remotely contemplate either of the steps of "examining performance of each wireless link to identify a poorly performing wireless link", and "temporarily interrupting bi-directional data transmission over the poorly performing wireless link", as required by the present invention.

The Examiner's combination of references

In light of the foregoing, it will be apparent that the Examiner's assertion that "both references disclosed such method of monitoring and temporarily interruption of the wireless communication link," is utterly unfounded. Akita monitors exactly one link, and interrupts reception of a control channel to look for the BCCH frame of a new base station; while Ludwig responds to an interrupt message (IM) to resend data packets lost during a communications interruption. Neither reference teaches "interrupting bi-direction data transmission through the identified poorly performing link " as required by the present invention.

Furthermore, the Examiner's statement: "it would have been obvious to one of ordinary skill in the art to provide such method of data processing between devices of Ludwig to the communication system of Akita et al...." is so garbled as to be virtually unintelligible. However, the Examiner appears to be asserting that, based on Ludwig, it would be obvious to reverse the roles of the mobile unit and base station of Akita et al, so that the hand-off procedure of Akita et al is implemented in the base station. However, such an arrangement has no plausible rational. In particular, it cannot achieve the "efficient handling of data transmission to effectively utilize resources for a zone, cell of a predetermined area within the network " as alleged by the Examiner. Instead, it yields a base station which monitors a link


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(with the mobile unit) and, upon finding the link to be poorly performing, interrupts control channel signalling from the mobile unit in order to attempt to set up a new wireless link with another mobile unit. This operation clearly fails to accomplish either the purposes of the present invention or the Examiner's proposed "efficient handling of data transmission...". In the alternative, one might speculate that the base station, upon finding a poorly performing link, might attempt to force a hand-off of the involved mobile unit to another base station. However, quite apart from the obvious inefficiencies involved in such operation, such an arrangement is neither taught nor suggested by Akita, and is entirely unrelated to the presently claimed invention.

In light of the foregoing, it is submitted that the Examiner's claim rejections are entirely lacking proper factual basis, wherefore Pre-Appeal panel review of this case is believed to be appropriate, and early action in that respect is courteously solicited.

If any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this response, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 19-5113.

Respectfully submitted,
Richard LODGE, et al


By: Kent Daniels, P.Eng.
Reg. No. 44206
Attorney for the Applicants

Date: November 30, 2005

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